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Legal Representatives for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

ANTONIO MENA  
8813 Little Oaks Way  
Stockton CA 95209

Case No. R-2020

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**

Respiratory Care Practitioner License No. 17277

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 6, 1994, the Respiratory Care Board issued Respiratory Care Practitioner License Number 17277 to Antonio Mena (Respondent). The Respiratory Care Practitioner License was in effect at all times relevant to the charges brought herein and will expire on May 31, 2006, unless renewed.

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1 DISCIPLINARY HISTORY

2 3. On September 30, 2004, the Board filed Accusation No. R-1950 against  
3 respondent based on his conviction of Penal Code sections 646.9(a) and (b) [stalking], 422  
4 [criminal threats] and 664/422 [attempted criminal threats.] He was also convicted of Health and  
5 Safety Code sections 11377(a) [possession of a controlled substance, methamphetamine] in  
6 violation of Business and Professions code sections 3750(d), 3752 [conviction], 3750(g),  
7 3750.5(a) [possession of a controlled substance] and CCR 1399.370(a) and (d). Effective January  
8 31, 2005, through a stipulated settlement, Respondent's Respiratory Care Practitioner License was  
9 revoked. However, the revocation was stayed and Respondent's license was placed on probation  
10 for a period of five (5) years with certain terms and conditions. A copy of that decision is attached  
11 as **Exhibit A** and is incorporated by reference.

12 JURISDICTION

13 4. This Petition to Revoke Probation is brought before the Respiratory Care  
14 Board (Board), Department of Consumer Affairs, under the authority of the following laws. All  
15 section references are to the Business and Professions Code unless otherwise indicated.

16 5. Section 3710 of the Code states: "The Respiratory Care Board of California,  
17 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the  
18 Respiratory Care Practice Act]."

19 6. Section 3718 of the Code states: "The board shall issue, deny, suspend, and  
20 revoke licenses to practice respiratory care as provided in this chapter."

21 7. Section 3750 of the Code states:

22 "The board may order the denial, suspension or revocation of, or the imposition of  
23 probationary conditions upon, a license issued under this chapter, for any of the following  
24 causes:

25 "(g) Conviction of a violation of any of the provisions of this chapter or of any  
26 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
27 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
28 violate any provision or term of this chapter or of any provision of Division 2 (commencing

1 with Section 500).

2 “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
3 substantially related to the qualifications, functions, or duties of a respiratory care  
4 practitioner.

5 “(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible  
6 entries in any patient, hospital, or other record.”

7 COST RECOVERY

8 8. Section 3753.5, subdivision (a) of the Code states:

9 "In any order issued in resolution of a disciplinary proceeding before the board, the  
10 board or the administrative law judge may direct any practitioner or applicant found to have committed  
11 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and  
12 prosecution of the case."

13 9. Section 3753.7 of the Code states:

14 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include  
15 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,  
16 and service fees."

17 10. Section 3753.1 of the Code states:

18 "(a) An administrative disciplinary decision imposing terms of probation may include,  
19 among other things, a requirement that the licensee-probationer pay the monetary costs associated with  
20 monitoring the probation. "

21 FIRST CAUSE FOR DISCIPLINE AND TO REVOKE PROBATION

22 (Failure to Abstain from Alcohol; Dishonest Act; Falsifying a record)

23 11. Respondent's probation is subject to revocation because he drank alcohol  
24 on six occasions in violation of the terms of his probation, and when specifically asked if he drank  
25 alcohol, he denied it under penalty of perjury in violation of code sections 3750(j) [dishonest act]  
26 and 3750(k) [falsifying a record.] The circumstances are as follows:

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- 1           A.     Probation Condition 3 of the Decision and Order in Case R-1950 states:  
2           “Respondent shall completely abstain from the possession or use of alcohol...”
- 3           B.     Compass Vision Inc. (CVI) administers the Board’s biological fluid testing  
4 program, and conducts ethyl glucoronide (EtG) testing, which is a biological marker for alcohol  
5 use, and can be detected in urine for up to five days after alcohol use.
- 6           C.     On or about March 23, 2005, respondent provided a specimen for testing  
7 and analysis, which tested positive for EtG in the amount of 510 nanograms per milliliter.
- 8           D.     On or about November 17, 2005, respondent provided a specimen for  
9 testing and analysis, which tested positive for EtG in the amount of 290,000 nanograms per  
10 milliliter. In a Drug Questionnaire dated December 18, 2005, respondent admitted under penalty  
11 of perjury that he drank two and a half beers on November 17, 2005, prior to providing a  
12 specimen.
- 13          E.     On or about January 12, 2006, respondent provided a specimen for testing  
14 and analysis, which tested positive for EtG in the amount of 1,100 nanograms per milliliter.
- 15          F.     On or about February 1, 2006, respondent provided a specimen for testing  
16 and analysis, which tested positive for EtG in the amount of 2,000 nanograms per milliliter.
- 17          G.     On or about March 13, 2006, respondent provided a specimen for testing  
18 and analysis, which tested positive for EtG in the amount of 7,100 nanograms per milliliter.
- 19          H.     On or about March 20, 2006, respondent provided a specimen for testing  
20 and analysis, which tested positive for EtG in the amount of 5,700 nanograms per milliliter.
- 21          12.     On March 1, 2006, respondent completed a Drug Questionnaire. He stated  
22 under penalty of perjury that he had not consumed alcohol in the prior three months when in fact,  
23 he did drink alcohol.

## 24                           SECOND CAUSE TO REVOKE PROBATION

### 25                                   (Biological Fluid Testing)

- 26          13.     Probation Condition 2 in the Decision and Order in R-1950 states:  
27          “Respondent, at his expense, shall participate in random testing, including, but not  
28          limited to, biological fluid testing ... “

1                   14.     Respondent's probation is subject to revocation because he failed to appear  
2 for random testing on January 5, 2006 and on February 17, 2006.

3                                   THIRD CAUSE TO REVOKE PROBATION

4   (Probation Monitoring Program)

5                   15.     Probation Condition 8 in the Decision and Order in R-1950 states:

6                   "Respondent shall comply with requirements of the Board appointed probation  
7 monitoring program, and shall, upon reasonable request, report to or appear to a  
8 local venue as requested."

9                   16.     Respondent's probation is subject to revocation because he failed to call  
10 CVI's random telephone system to determine if he was selected to provide a specimen for testing  
11 and analysis on May 28, 2005.

12                                   PRAYER

13                   WHEREFORE, Complainant requests that a hearing be held on the matters herein  
14 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

15                   1.     Revoking the probation that was granted by the Respiratory Care Board of  
16 California in Case No. R-1950 and imposing the disciplinary order that was stayed thereby  
17 revoking Respiratory Care Practitioner License No. 17277 issued to Antonio Mena;

18                   2.     Revoking or suspending Respiratory Care Practitioner License No. 17277,  
19 issued to Antonio Mena;

20                   3.     Ordering Antonio Mena to pay the Respiratory Care Board the costs of the  
21 investigation and enforcement of this case, and if probation is continued or extended, the costs of  
22 probation monitoring;

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4. Taking such other and further action as deemed necessary and proper.

DATED: April 10, 2006

Original signed by Liane Zimmerman for: \_\_\_\_\_  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant